FOR ARGUMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1979

EXXON CORPORATION,

Appellant,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Appellee.

On Appeal From the Supreme Court of Wisconsin

REPLY BRIEF OF APPELLANT

THOMAS G. RAGATZ
LEONARD S. SOSNOWSKI
1 South Pinckney Street
Madison, Wisconsin 53703

LLOYD M. McBRIDE
PAUL D. FRENZ
110 North Wacker Drive
Chicago, Illinois 60606

Counsel for Appellant

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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REPLY BRIEF OF APPELLANT

This brief is submitted by Appellant, EXXON CORPORATION, in reply to the brief filed by Appellee, WISCONSIN DEPARTMENT OF REVENUE.

ARGUMENT

I. Appellant Is Contending That A Finding Of Unitary In And Of Itself Is Not Sufficient To Subject Virtually All Of its Income To The Wisconsin Apportionment Formula.

A. Neither the record here nor the principles of Due Process permit a unitary *per se* conclusion.

Although not conceding that it is a unitary business, Appellant is ready to assume, *arguendo,* that it may be unitary under some definition or other for the purposes of this case; therefore, in this Appeal, Appellant is not challenging, as its primary issue, the conclusion by the Wisconsin Supreme Court that it is a unitary business. It is, however, Appellant's position that the conclusion of unitary by the Wisconsin Supreme Court does not thereby automatically permit Wisconsin to subject virtually all of Appellant's income to apportionment under the Wisconsin statutes, particularly in light of the Commission's finding that Appellant's major functional departments constitute separate unitary businesses (JS App. 39).

Appellee asserts (at p. 11 of its brief) that the Wisconsin Supreme Court reviewed facts in the record to reach its unitary conclusion. Had it dealt with the key facts that court would have had to explain and overrule the unrefuted findings of fact that there was no economic dependence between Appellant's Wisconsin marketing activities and its Exporation and Production or Refining functions (findings of fact nos. 21 and 23, JS App. 39). Since there was *no* evidence on which to overrule these factual findings, Appellee having offered no such evidence, that

court reasoned that the unitary issue was a question of law, thus allowing it to reach its unitary *per se* result.

Both Appellee and the Wisconsin Supreme Court conclude that the existence of common ownership and some central corporate services under a single board of directors makes the entire corporate enterprise unitary, ignoring the separately managed functional departments which were proven to have operated under the principle of functional profitability independence. That court noted the obvious, that the profits of each functional segment combined to produce the profit of the overall corporation (JS App. 16). With such reasoning no corporate enterprise could ever be deemed other than unitary, regardless of how diverse and unrelated its activities.

Wisconsin's unitary *per se* concept disclosed above ignores the Due Process Clause requirements of a minimal connection between the activities taxed and the taxing state, and a rationale relationship to values connected with the state. *Moorman Manufacturing Co.* v. *Bair,* 437 U.S. 267, 272-73 (1978). Clearly, this minimal connection and rationale relationship must be viewed on an activity by activity basis, and a connection to one activity in one state does not *per se* mean all different activities in other states are subject to taxation in the first state. The principle was well stated in *Hans Rees' Sons* v. *North Carolina,* 283 U.S. 123 (1931), that Due Process is violated if the apportionment formula:

> ". . . operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction." (283 U.S. at 134).

In that case this Court concluded that the percentage of income attributable to North Carolina was "out of all appropriate proportion to the business transacted" by the taxpayer in that state. (283 U.S. at 135).

If the Wisconsin Supreme Court's sequential conclusions, one, that single ownership and overall management were all that is required for a finding of a single unitary business, and, two, that the total income of all unitary businesses is subject to apportionment, are accepted, then every corporate enterprise constitutes *per se* a single unitary business and all are *per se* subject to total apportionment. Obviously, this logic cannot pass enlightened constitutional muster, and the Wisconsin Supreme Court, in its zeal in concluding that Appellant was a single unitary business, overlooked these essential Due Process Clause requirements.

B. Proof of taxation of extraterritorial income by separate functional accounting is precisely what the Court prescribed in *Moorman*

Appellee states that separate accounting is incompatible with the concept of a single unitary business and thus argues that, by its very nature, income cannot be attributed to a single activity or group of activities engaged in by that unitary business. Appellee gives no authority for this novel proposition and ignores authority to the contrary. Various cases, including *Bass, Ratcliff & Gretton, Ltd.* v. *State Tax Commission,* 266 U.S. 271 (1924); *Hans Rees' Sons* v. *North Carolina, supra; Butler Brothers* v. *McColgan,* 315 U.S. 501 (1942); and *Moorman Manufacturing Co.* v. *Bair, supra,* have all only ruled that a taxpayer attacking a formula of apportionment has the burden of proving by "clear and cogent evidence" that the formula results in the taxation of extraterritorial income. Appellee, however, seeks to stretch these decisions into the proposition that if a business is once found to be unitary, such a burden can *never* be met by the taxpayer, since, if the taxpayer is unitary, *ipso facto* all of its income is automatically subject to apportionment.

Appellee thereby is endorsing the unitary *per se* concept adopted by the Wisconsin Supreme Court which, as Appellant has set forth in its initial brief, results in a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Moreover, Appellee overlooks the fact that Appellant is not attacking apportionment as being invalid when appropriately applied, but is simply arguing that Appellant's separate functional accounting fulfills the burden of proof imposed upon and permitted by previous decisions of this Court.

Nor can Appellee find solace in *Underwood Typewriter Co.* v. *Chamberlain,* 254 U.S. 113 (1920), for there the taxpayer attempted by geographical separate accounting to show that the formula taxed income beyond the constitutional reach of the State of Connecticut, but made no further showing that the formula was either arbitrary or unreasonable in its application. In *Underwood,* the taxpayer simply took Connecticut sales and subtracted the manufacturing costs associated therewith to determine its measure of net income attributable to Connecticut. What Appellant has done, through its separate functional accounting for Exploration and Production income based on bona fide market place posted field prices, was prove that such income was derived and earned fully at the well head in various production states outside of Wisconsin and therefore had no relationship to Wisconsin and was truly extraterritorial in nature. On this basis, *Underwood* is clearly distinguishable.

Butler Brothers, supra, in that it concerned separate geographical accounting by the taxpayer which failed to show the precise sources of net income and the factors responsible for income being earned in other states, is also distinguishable from this case presently before this Court. Most importantly, *Butler Brothers* specifically

acknowledged that a taxpayer can attack a formula of apportionment by showing that it results in the taxation of extraterritorial income, although the taxpayer has the burden of proving that extraterritorial income has in fact been taxed. Appellant contends that the record here shows that this burden has been met. Finding of fact no. 18 (JS App. 39) states that the income derived from each of Appellant's functional operating departments could be determined from Appellant's books and records. The net income of the Exploration and Production Department for the years in issue is set forth in the record. Note that Appellee did not challenge finding no. 18 on appeal (JS App. 41), thus accepting the integrity of the separate functional accounting. Note further that no Exploration and Production activities were conducted in Wisconsin (see Exhibit 21, A. 756).

Notwithstanding that Appellee has here conceded the integrity of Appellant's separate functional accounting, Appellee argues that a taxpayer can never satisfy this burden of proof in that any accounting figures put forward by a taxpayer are not reliable and not compatible with the unitary concept, intimating that only the apportionment tax accounting method is reliable. Clearly, this Court never meant to make the burden of proof insurmountable for a taxpayer able to establish by other methods the unconstitutionality of a formula of apportionment that taxes extraterritorial income.

Appellant has indeed relied upon certain language in this Court's *Moorman* opinion, but, Appellant does not accept Appellee's assertion that the language contained therein is *dicta;* rather it establishes, as expressed in Appellant's initial brief, a framework necessary for a taxpayer to establish a Due Process violation when challenging a state's apportionment formula. Appellee attempts

to discredit this language in *Moorman* with the analysis that the single-factor formula in *Moorman* was inherently more suspect and, therefore, any taxpayer attempting to attack such a formula would be entitled to use separate functional accounting. This Court, in *Moorman,* made no such distinction. Thus, Appellee sets up a strawman just to indulge in its destruction; but an analysis of this Court's opinion in *Moorman* discloses no such strawman distinction.

In *Moorman,* this Court merely affirmed that it is up to the taxpayer to demonstrate that any apportionment formula, single-factor, three-factor or other, is arbitrary, unreasonable and taxes extraterritorial income; and that separate functional accounting is an acceptable means of making this demonstration. Appellee has attempted to distinguish *Moorman* on grounds not contained in that decision, namely, by the alleged difference between a three-factor formula and a single-factor formula. This Court, in *Moorman,* did not recognize that two different types of apportionment formulas would have to be attacked differently by taxpayers, depending upon whether they were confronted with a single-factor or a three-factor formula. Regardless of the type of apportionment formula involved, it is clear from *Moorman* and from earlier cases that the burden and rights of a taxpayer attacking these formulas remain the same. In this regard *Moorman* and *Butler Brothers* are still consistent and reconcilable with each other.

Consequently, if a taxpayer can prove that certain income is earned in another state, and hence extraterritorial as to the taxing state, the constitutional protection provided under the Due Process Clause is still applicable, regardless of whether a single-factor, three-factor or other formula is being utilized by the taxing state.

In the record before the trial court in this case, Appellant proved that all of its Exploration and Production functional income, included by Wisconsin in apportionable income, was, in fact, generated by operations in states other than Wisconsin. This proof consisted of not only Appellant's separate functional accounting for its Exploration and Production Department (Schedule A of Exhibit 28, A. 760), but also of testimony from various witnesses that the posted field price was a bona fide third party market price (A. 301-304, 430), and that all dispositions of crude oil by Appellant's Exploration and Production Department were made at the posted field price, whether the disposition was a sale to a third party or an internal transfer to one of Appellant's refineries (A. 204-207, 299-300). As such, Appellant has met its burden of proof as required by *Bass, Ratcliff, Hans Rees', Butler Brothers* and *Moorman, supra,* which is further supported by Appellee's concession of the integrity of Appellant's separate functional accounting.

C. The dependence-contribution test is insufficient to determine whether Due Process requirements have been met.

In its initial brief, Appellant's challenge of the "dependent upon or contributory to" test was not primarily intended to bring into question whether it was the proper definitional test of a unitary business; rather this test was challenged as a proper Due Process test to justify the taxation of Appellant's Exploration and Production income which otherwise had no rational relationship to the State of Wisconsin. The State of Wisconsin cannot rely upon the "dependent upon or contributory to" test to buttress its unitary *per se* approach and subject Appellant's total corporate income to taxation once the determination had been made by Wisconsin that Appellant was in fact unitary. As expressed above, this *per se* concept would prevent Appellant from exercising its right to prove that the apportionment formula applied by Wisconsin resulted in the taxation of extraterritorial income.

In *Hans Rees', supra,* this Court found that the Due Process Clause had been violated because the taxpayer had been able to present clear proof that extraterritorial income had been subjected to taxation by the application of an apportionment formula. By including a portion of Appellant's Exploration and Production income in Wisconsin's apportioned income, in spite of Appellant's proof and Appellee's concession that all such income was earned outside Wisconsin, the result reached by the Wisconsin Supreme Court has likewise violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. If Appellant's record here does not adequately show Appellee's overreach, then it is submitted that such a showing is judicially impossible.

II. The Subjection Of Appellant's Income From Exploration and Production Operations To The Wisconsin Apportionment Formula Does Violate The Due Process Clause Of The Fourteenth Amendment To The United States Constitution.

A. Appellant has proved, and Appellee has conceded, that its Exploration and Production net income was derived wholly outside the State of Wisconsin.

Appellee attempts to rely upon the unitary *per se* concept expressed by the Wisconsin Supreme Court to counter Appellant's constitutional Due Process argument. Appellee takes the position that since Appellant is a unitary busi-

ness all its income, including that generated by its Exploration and Production activities except for third party sales, is properly subject to apportionment under Wisconsin's three-factor formula. As discussed above, this unitary *per se* concept completely disregards the right of a taxpayer to prove that the inclusion of income in the apportionment formula is arbitrary, unreasonable and results in the taxation of extraterritorial income.

Appellee contends that just because Appellant "places a value on internal transfers of crude oil" (Appellee's brief at p. 29) does not indicate it has derived income from such transfers. This argument attempts to obscure the previously noted fact that Appellee has conceded the integrity of the income figures in the record derived by Appellant's Exploration and Production Department.

Appellee seems to have forgotten that the proof in the case below conclusively established that the internal transfer prices were identical to prices occurring in the market place for the actual sale of crude oil, of similar grade and from the same production field, to third parties, and that this proof by Appellant established that there was in fact derived income for all the activities of its Exploration and Production Department. (Confirmed by finding of fact no. 10, unchallenged by Appellee. JS App. 38.) The fact that in some of these transactions Appellant did not make a third party sale and did not realize a profit is not fatal. Appellee itself clearly recognized this in *Kansas City Star Co.* v. *Department of Taxation,* 8 Wis.2d 441, 99 N.W.2d 718 (1959).

As was set forth in Appellant's initial brief, it has never heretofore been necessary for taxpayers to be able to rely only on actual realized profits to establish that extraterritorial values or income had been taxed by an unconstitutional apportionment formula. What is important here is

that the income from the Exploration and Production activities of Appellant had been calculated by utilizing the posted field price which was recognized as a bona fide third party price that was not subject to being contrived, rigged or manipulated by Appellant. In fact, Appellee has recognized the validity and integrity of the posted field price (see Exhibit 11-11, A. 720) which is Appellee's guide to auditing oil companies), as well as the integrity of Appellant's income derived from its Exploration and Production Department (finding of fact no. 18, JS App. 39, not challenged on appeal, JS App. 41).

The decision by the Supreme Court of South Carolina rendered in *Exxon Corporation* v. *South Carolina Tax Commission,* 258 S.E.2d 93 (S.C. 1979), cannot be cited as final binding authority as that case, involving a very similar factual setting and similar questions of law, has been appealed to this Court as Docket No. 79-843, and is, as of the date of the printing of this brief, awaiting a decision on the noting of probable jurisdiction.

Appellant cited in its initial brief the cases of *Standard Oil Co.* v. *Wisconsin Tax Commission,* 197 Wis. 630, 223 N.W. 85 (1929), and *Kansas City Star Co.* v. *Department of Taxation, supra,* for the propositions, respectively, that derived income can be calculated without the necessity of third-party sales and that intercompany transfer prices can be used to determine derived income. The reasoning in these decisions on these points remains unrefuted and unchanged by the 1949 statutory amendment which the Appellee claims effectively reversed the *Standard Oil* case, or by the fact that Appellee in the *Kansas City Star* case did not challenge the use of separate accounting. *Celon Co.* v. *Department of Taxation,* 269 Wis. 372, 69 N.W.2d 453 (1955), relied upon by Appellee, acknowledged that the 1949 amendments would have no application to a "dual or multiform business", that is, one which standing alone

could operate and produce a profit, such as Appellant's Exploration and Production function. (269 Wis. at 379). Thus, whatever may have been intended by the Wisconsin Legislature, the Wisconsin Supreme Court in *Celon Co.* was careful to circumscribe the 1949 amendments relied upon by Appellee to prevent the unconstitutional result later adopted by that Court in the instant case. With respect to *Kansas City Star,* Appellee suggests that it would have applied the 1949 amendments if later years had been at issue in that case. However, the same taxpayer has continued to report in Wisconsin on a separate accounting basis using arms-length transfer prices, and indeed, has been allowed deductions for intracompany interest in such separate accounting determinations. See *The Kansas City Star Co.* v. *Wis. Dept. of Revenue,* CCH Wisconsin Tax Reports ¶201-504 (Wis. Tax Appeals Comm., 1978), *aff'd.* CCH Wisconsin Tax Reports ¶201-591, (Cir. Ct. Dane County, 1979).

Appellee admits (at page 31 of its brief) that its formula apportionment approach does not necessarily identify the precise geographical source of Appellant's income, but contends that it is a reasonable, if not the best possible, method of apportioning the income of a unitary business. However, Appellant's proof, the unchallenged separate functional accounting of its Exploration and Production Department, coupled with its use of a bona fide market price, the posted field price, has enabled Appellant to specifically identify the geographical source of its Exploration and Production income as being all outside of and therefore extraterritorial to the State of Wisconsin. That proof cannot be ignored, as Appellee suggests, on the basis that it is not compatible with the unitary concept. Nor can Wisconsin overcome this proof by adopting the unitary *per se* approach and contending that merely because Appellant is unitary all of its income, regardless of its source, is subject to apportionment by Wisconsin.

B. Appellant's separate functional accounting fulfills the requirement prescribed in *Moorman* for proof of a Due Process violation.

In its *Moorman* decision, this Court found against the taxpayer for lack of adequate proof by "separate accounting analysis" showing the taxation of extraterritorial income (437 U.S. at 272). The prescription, therefore, to establish a Due Process Clause violation is separate functional accounting proof. Such proof is clearly found in the record here.

Appellee contends that, because Appellant's separate functional accounting analysis does not account for "a single dollar of income on a geographical basis" (page 32 of its brief), such analysis is incomplete. Not only is this statement incorrect, but it begs the question since it has no bearing on the proof upon which Appellant relies to support its constitutional attack on the Wisconsin apportionment formula. Part of Appellant's record before the Commission established on a geographical accounting basis the income attributable to Wisconsin. For the years in issue, this showed significant losses. This information was put forth by Appellant, not for its proof in chief as to the unconstitutional application of the Wisconsin apportionment formula, but rather to emphasize that by any accounting standard, functional or geographic, the Exploration and Production income of Appellant was extraterritorial in nature and not subject to taxation under Wisconsin's apportionment formula. Once Appellant has proven that its Exploration and Production income is extraterritorial in nature to Wisconsin, surely it does not have to then explain on a nationwide basis what has happened to the balance of its income in order to provide validity for the proof of the extraterritorial Wisconsin overreach. Appellee overlooks the established tax law

principle that a taxpayer need only prove the assessment is arbitrary or incorrect to meet his burden of proof; he is not required to prove the correct taxable income. *Helvering* v. *Taylor,* 293 U.S. 507 (1935).

Because the Exploration and Production income is extraterritorial in nature, it remains such regardless of how the balance of Appellant's income is treated elsewhere. Appellee apparently believes that Appellant is relying primarily on its geographical separate accounting for Wisconsin to support its constitutional attack on the application of the Wisconsin apportionment formula. The record below with the proof set forth therein, and Appellant's separate *functional* accounting for its Exploration and Production Department, together with proof of the nature and usage of the posted field prices, combine to establish that its Exploration and Production income is extraterritorial in nature and not subject to taxation by the State of Wisconsin. Consequently, Appellant's proof is not piecemeal in nature, but rather is complete in establishing that such income is extraterritorial to and has no relationship with the State of Wisconsin.

III. Subjecting Income From Appellant's Exploration And Production Operations To Apportionment In Wisconsin Does Violate The Commerce Clause of Article I Of The United States Constitution.

Appellee, like the Wisconsin Supreme Court, makes the argument that, since Wisconsin's assessment of taxable income for the period in question was only 22/100ths of one percent of Appellant's total company income while for the same period Wisconsin sales constituted only 41/100ths of one percent of total company sales, Wisconsin cannot be accused of reaching beyond its constitutional limits.

This *de minimus* argument finds no support in either theory or previous decisions by this Court. The unconstitutional application of a state's apportionment formula, resulting in the taxation of extraterritorial income, is not rehabilitated simply because the amount of income being subjected to apportionment is extremely small when compared to the taxpayer's total company income. If a tax is unconstitutional, it is unconstitutional regardless of the amount of dollars involved.

Appellee cites *Moorman, supra,* as authority that Appellant's Commerce Clause argument is not valid. *Moorman* does not support this position; it stands for the proposition that, merely because a state uses a single-factor apportionment formula even though most other states use the more common three-factor apportionment formula, this alone, without special evidentiary proof, does not show a sufficient risk of multiple taxation to render the single-factor formula unconstitutional under the Commerce Clause of the United States Constitution. This Court in *Moorman* recognized that when different states use different formulas some risk of duplicative taxation exists, but not a sufficient risk of multiple taxation to cause such usage to be unconstitutional *without special proof.*

The risk of multiple taxation which Appellant claims exists in this case is not brought about by apportionment formulas with different numbers of factors; rather it is created by the inclusion in Wisconsin's apportionable income of situs or extraterritorial income earned by Appellant's Exploration and Production Department. Such income has obviously been taxed by Wisconsin and as witnessed by the cases cited in Appellant's initial brief, is taxed or exposed to taxation in those states where such Exploration and Production income is actually derived and earned. *Moorman* does not address this problem, and this

Court's decision in *First Federal Savings & Loan Association of Boston* v. *State Tax Commisison,* 437 U.S. 255 (1978), is distinguishable, as there the taxpayer argued that at some time in the future another state *might* attempt to tax income from loans secured by property in that state, but apparently no record was made by the taxpayer that such income even existed or that it was actually earned in another state.

Finally, Appellee's closing quote from this Court's decision in *Adams Express Company* v. *Ohio,* 165 U.S. 194 (1896), *rehearing denied,* 166 U.S. 185 (1897), is not dispositive of Appellant's situs income position. *Adams Express* questioned the ability of a state to impose an *ad valorem* property tax upon intangible assets of the taxpayer. These intangibles were calculated by taking the total value of the corporation, determined by multiplying the total number of shares of the corporation by the market value for such shares, and deducting therefrom the total value of the taxpayer corporation's real and personal property. In *Adams Express,* the taxpayers argued that such intangible assets only had a situs in the state where each corporation was domiciled and could not therefore be taxed by any other states. Discussing this position of the taxpayers, this Court stated:

> "Where is the situs of this intangible property? Is it simply where its home office is, where is found the central directing thought which controls the workings of the great machine, or in the state which gave it its corporate franchise; or is that intangible property distributed wherever its tangible property is located and its work is done? Clearly, as we think, the latter." (166 U.S. at 223).

Certainly, the quotation utilized by Appellee from *Adams Express* has no application to Appellant's situation where Appellant's proof established that the Exploration and Production income had been actually derived and earned from the operation of oil and gas production activities in states other than Wisconsin. Appellant's case does not involve the question of a situs determination for elusive intangible assets. Moreover, *ad valorem* taxes involve issues of valuation, wholly dissimilar to the issues of the isolation and identification of taxable income.

The reasoning set forth in Appellant's initial brief concerning the Commerce Clause violation resulting from the Wisconsin Supreme Court's application of the Wisconsin apportionment statute is valid and should be followed. The constitutional principle embodied in the multiple taxation doctrine forbids, under the Commerce Clause, overlapping taxation. As previously espoused by this Court, this doctrine deals with the power to tax rather than the actuality of taxation. The argument that there is no Commerce Clause violation without proof of the actuality of multiple taxation, if adopted, would mean an emasculation of the multiple taxation doctrine, and in effect would mean that state taxation of multistate businesses is a foot race where the first state to tax an activity wins.

Thus, the actuality of multiple taxation cannot be the proper constitutional test; rather the test must involve the power of another state to tax the activity in issue. Income derived at situs is obviously within the power of the situs state to tax. Even Wisconsin recognizes this, both in its statute which allocates to situs the income derived from any farm, mine or quarry, and by Appellee, which concedes that oil and gas production is "mining", yet excludes only situs income from third party sales from apportionable income. But this exclusion does not satisfy constitutional requirements, as all income derived from situs operations should be excluded.

The present record conclusively establishes the accounting integrity of the income derived from Appellant's Exploration and Production function. Appellant's expert accounting witness, Mr. Wehner, a premier oil and gas accounting authority, testified to the correctness of the determination of the Exploration and Production functional income based upon transfer prices equivalent to third party prices; the trial court found this as a fact; and Appellee did not dispute this. The record here stands unrefuted as to the proper measure of the income derived from the Exploration and Production function. Thus, there is *no* dispute as to the amount of the situs income; the only dispute is as to whether Wisconsin can tax it.

This Exploration and Production functional income is unquestionably situs income, and also it is without question that the states where the Exploration and Production activities are conducted have the power to tax this income. For a non-production state to include Exploration and Production income in apportionable income subjects such income to at least the risk and, as demonstrated by the cases cited in Appellant's Brief, in many instances the actuality of multiple taxation. If the Commerce Clause's multiple taxation doctrine means what this Court has previously said it means, then Wisconsin cannot include *any* income derived from Exploration and Production in apportionable income. Consequently, a reversal of the Wisconsin Supreme Court as regards the taxation of situs income is essential for compatibility with the decisions cited in Appellant's Brief.

CONCLUSION

For the reasons expressed herein and in Appellant's initial brief, it is respectfully submitted that Appellant has fulfilled the requisite burden of proof necessary to establish Due Process and Commerce Clause violations arising from the Wisconsin Supreme Court's interpretation and application of the Wisconsin apportionment statute to Appellant's Exploration and Production Department's income. It is, therefore, respectfully requested that the application of the Wisconsin statutes as construed by the Wisconsin Supreme Court be held unconstitutional, and that the decision of the Wisconsin Supreme Court be reversed, with direction that *all* income derived from Appellant's Exploration and Production Department be allocated to situs and excluded from Wisconsin apportionable income.

Respectfully submitted,

THOMAS G. RAGATZ
LEONARD S. SOSNOWSKI
One South Pinckney Street
Madison, Wisconsin 53703

LLOYD M. MCBRIDE
PAUL D. FRENZ
110 North Wacker Drive
Chicago, Illinois 60606

Counsel for Appellant